IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1068 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

Yes. To the learned Trial Magistrate wherever he might be if in service.

STATE OF GUJARAT

Versus

PUNJABHAI BHAVABHAI RABARI

Appearance:

Shri S.T. Mehta, Additional Public Prosecutor, for the Appellant-State

Shri J.T. Trivedi, Advocate, for the Respondents-Accused

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 09/10/96

ORAL JUDGEMENT

The order of closure of proceeding under sec. 258 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for brief) passed by the learned 2nd Joint Judicial Magistrate (First Class) at Anand on 26th May 1992 in

Criminal Case No. 5399 of 1986 is under challenge in this appeal under sec. 378 thereof.

2. It is not necessary to set out in detail the facts giving rise to this appeal. The respondents herein were alleged to have committed the offences punishable under sec. 323 read with sec. 114 of the Indian Penal Code, 1860 (the IPC for brief) and the offences punishable under sec. 161 and 162 of the Gujarat Panchayats Act, 1961. The necessary charge-sheet was submitted in the Court of the Judicial Magistrate (First Class) at Anand on 11th December 1986. It came to be registered as Criminal Case No. 5399 of 1986. The charge against the respondents-accused was framed on 22nd December 1987 at Ex. 6 on the record of the trial court. No accused pleaded guilty to the charge. It appears that the respondents-accused appeared through their advocate also and certain applications for time were made by and on behalf of the advocate and they were granted. The proceeding shows the presence of the accused on several dates. It however appears that the learned trial Magistrate gathered an impression that the processes against the respondents-accused were issued but they were received back on the ground that their address was not proper. It appears that the prosecution also did not keep its witnesses present. It appears that out of exasperation the learned trial Magistrate terminated the proceeding under sec. 258 of the Cr.P.C. mainly on the ground that the prosecution failed to give the correct address of the accused and also on the ground that the prosecution did not keep its witnesses present. Such termination of the proceeding on the part of the learned trial Magistrate has aggrieved the prosecution agency. It has therefore by leave of this Court invoked its appellate jurisdiction under sec. 378 of the Cr.P.C. for questioning the correctness of the aforesaid order passed by the learned trial Magistrate.

3. The preliminary objection raised by learned Advocate Shri Trivedi for the respondents-accused against maintainability of this appeal will have to be upheld. The reason therefor is quite simple. The order under sec. 258 of the Cr.P.C. would amount to discharge and not acquittal of the case in view of the binding ruling of the Supreme Court in the case of Municipal Corporation of Delhi v. Girdharilal Sapuru reported in AIR 1981 SC 1169. It has been held therein that the discharge order terminates the proceeding and it is therefore revisable under sec. 397(1) of the Cr.P.C.

4. At this stage learned Additional Public

Prosecutor Shri S.T. Mehta for the appellant-State has sought leave to convert this proceeding into a revisional application under sec. 397 of the Cr.P.C. Such oral request is accepted and this proceeding is ordered to be treated as a revisional application under sec. 397(1) of the Cr.P.C. Service of rule would not be necessary as learned Advocate Shri J.T. Trivedi appears for the respondents in this case.

5. As pointed out hereinabove, the process was served to the respondents-accused and their plea was also recorded and they did not plead guilty to the charge. In that view of the matter, it is strange and surprising that the learned trial Magistrate observed in his impugned order that the statement of the accused could not be recorded under sec. 251 of the Cr.P.C. in absence of sufficient details regarding their address. As pointed out hereinabove, their pleas were recorded and they did not plead guilty to the charge. That would go to show that the learned trial Magistrate entertained some wrong impression that the accused were not served.

6. So far as non-production of witnesses on the part of the prosecution is concerned, this Court has time and again impressed upon the subordinate courts with respect to its powers in that regard. The latest ruling on the point is the one in the case of State of Gujarat v. Rajendrasinh Ramjansinh reported in III(1996) C.C.R 152. The learned trial Magistrate ought to have kept the rulings mentioned therein in mind before terminating the proceeding under sec. 258 of the Cr.P.C. on the grounds stated therein.

7. In view of my aforesaid discussion, I am of the opinion that the order passed by the learned trial Magistrate on 26th May 1992 under sec. 258 of the Cr.P.C. in Criminal Case No. 5399 of 1986 cannot be sustained in law. It deserves to be quashed and set aside.

8. Learned Advocate Shri Trivedi for the respondents has however urged that the offences with which the respondents as the accused were charged in the trial Court were only petty offences and more than 10 years have rolled by since the date of commission of the alleged offences by the respondents herein. In that view of the matter, it has been urged by learned Advocate Shri Trivedi for the respondents that no useful purpose will be served by remanding the matter to the trial Magistrate for retrial of the respondents.

9. Ordinarily, passage of time would not mitigate

the severity of the offence or offences committed by the offender. However, in this case the offences with which the respondents as the accused were charged seem to be very petty offences. It transpires from the complaint on the record of the trial court that the respondents-accused had taken their cattle into the field of the original complainant and when he was trying to carry the cattle to the cattle pond they got wild and beat him with sticks. The incident is reported to have occurred at 5.30 p.m. on 25th September 1986. A little more than 10 years have rolled by since then. I think the passage of time might have healed the wounds of the original complainant. It appears that the complainant and the respondents-accused reside in the same village. It would not be desirable to remand the case to the learned trial Magistrate for restoration of the proceeding to file and for his fresh disposal according to law and thereby to reopen the wound that might have come to be healed by passage of nearly 10 years. In that view of the matter, though the impugned order passed by the learned trial Magistrate cannot be sustained in law, it will have to be maintained on the ground of long passage of time.

10. In the result, this appeal fails not on merits but on consideration of long passage of time. It is accordingly dismissed.

11. It appears that the same learned Magistrate had disposed of one criminal case bearing No. 1397 of 1988 on 20th May 1992 in a similar manner. That order was also appealed against by means of Criminal Appeal No. 1011 of 1992. By its decision rendered on 30th September 1996 in the aforesaid appeal, this Court set aside the order and remanded the matter to the trial court for restoration of the proceeding to file and for its fresh disposal according to law in the light of the aforesaid judgment of this Court as offences were found to be somewhat serious. It appears that the learned trial Magistrate was suffering from disposal mania at the relevant time and he seems to have adopted such dubious method of disposal of cases. A copy of this judgment along with a copy of the judgment in Criminal Appeal No. 1011 of 1992 decided on 30th September 1996 may therefore be placed before the learned Chief Justice for perusal and necessary action if deemed just and proper.
